

# The Bob Barker Gifts to Support Animal Rights Law

Taimie L. Bryant

In 2001, Pearson Television honored Bob Barker for thirty years of hosting *The Price is Right* by making an endowment gift of \$500,000 to Harvard Law School.<sup>1</sup> The endowment would fund teaching, research, and student opportunities in the field of animal law, specifically animal *rights* law. The gift was not a complete surprise to the public or to Barker. Barker's interest in animal protection was well-known to everyone involved in *The Price is Right*, and changes that acknowledged his concern for animals had occurred on the show since the 1980s. For years he had closed the program with the lines: "Help control the pet population. Have your pets spayed or neutered." Over time, products made of fur or leather, aquariums, and fishing equipment were eliminated as show prizes; prize barbecues were displayed with vegetables on the grill, not meat.<sup>2</sup> When asked what would be a good way to recognize his many successful years of hosting, Barker himself raised the possibility of an endowment for the training and teaching of lawyers in animal rights law.<sup>3</sup>

In the years since that first gift to Harvard Law School in 2001, Barker has endowed several law schools with \$1 million-dollar gifts and increased the Harvard Law School gift by another \$500,000 so that the endowment would equal that of other schools. At this point, the law schools of Columbia, Duke, Georgetown, Harvard, Northwestern, Stanford, UCLA, and the University of Virginia have received million dollar endowments. All of the gifts require the recipient school to offer a course in animal law a minimum of every other year and hold an animal law conference or other event in any year that animal law is not offered. In addition, all of the gifts require that Barker endowment income be used solely to support a program for teaching and research in

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1. Nick Madigan, Enlisting Law Schools in Campaign for Animals, N.Y. Times Nov. 26, 2004, at B13.
2. Bob Barker & Digby Diehl, Priceless Memories 165 (Center Street 2009).
3. Madigan, *supra* note 1.

animal law. Therefore, any interest income that accumulates in excess of the costs of funding the animal rights law class is to be used for other animal law teaching and research projects.

Some gift agreements with law schools define the requirements by reference to animal law; others, by reference to animal *rights* law. It is likely that the choice of terms was important to law school deans considering a Barker gift, just as it was surely important to Barker. Barker might have preferred “animal rights” law because he seeks improvement in the treatment of animals; the term “animal law” is generic enough to include even those courses and programs whose purpose is to support status quo exploitation of animals.<sup>4</sup> But from a law school dean’s perspective, the term “animal rights” could invite controversy by suggesting privileging of particular perspectives in course materials and discussion. Moreover, animal protection has been seen as either the concern of “silly old women in tennis shoes”<sup>5</sup> or the obsessive focus of animal rights “terrorists” bent on the use of tactics, such as intimidation and property damage, known as “direct action.”

The term “animal rights” would be controversial even without the radicalism associated with direct-action animal rights activists. If “animal rights” is understood as the position that animals should have rights to prevent humans from exploiting them, the concept can be considered “radical” because animal exploitation is so deeply engrained in our society. Offering an animal rights law course on a campus where animal research is conducted might pose particular problems. Some in the field do hold the view that the goal of animal law should be abolition of the status of animals as the property of humans. Professor Gary L. Francione, an animal rights legal scholar, argues, for example, that the crucial right for animals is the negative right to be left alone and not subject to exploitation by humans.<sup>6</sup> Similarly, Steven M. Wise, an animal rights

4. For instance, the University of Oklahoma offered a spring intersession course from May 16<sup>th</sup> through May 23<sup>rd</sup> 2010 on “apply[ing] scientific knowledge about animals and agricultural production. Students will learn how to respond in a professional and accurate fashion about the legal, public policy, and scientific issues involved in the use of animals in agricultural production and contested by the animal rights movement.” See University of Oklahoma Law School, Animals and Agricultural Production—Law and Policy, [http://webcache.googleusercontent.com/search?q=cache:8giX\\_MUNFloJ:jay.law.ou.edu/faculty/kershen/AnAgPr/+animal+law\\_course+site:ou.edu&cd=1&hl=en&ct=clnk&gl=us](http://webcache.googleusercontent.com/search?q=cache:8giX_MUNFloJ:jay.law.ou.edu/faculty/kershen/AnAgPr/+animal+law_course+site:ou.edu&cd=1&hl=en&ct=clnk&gl=us) (last visited Aug. 3, 2010).
5. Paul Starobin, Animal Rights on the March, *Nat’l J.*, May 22, 2010, available at [http://www.nationaljournal.com/njmagazine/cs\\_20100522\\_1200.php](http://www.nationaljournal.com/njmagazine/cs_20100522_1200.php) (last visited August 13, 2010) (quoting Joyce Tischler, the founder of the Animal Legal Defense Fund, as saying, “For so long the animal protection movement was written off as just a movement of silly old women in tennis shoes.”).
6. See Gary L. Francione, *Becoming an Advocate for Animals*, UVA Lawyer, Fall 2001, at 72 (for a succinct statement of Professor Francione’s position). Professor Francione has also written several books and articles about the right of animals as sentient beings not to be treated as resources and the role of their status as the property of humans in causing them to be treated as resources. See also Gary L. Francione, *Animals Property & the Law* (Temple

attorney and scholar, argues that animals with capacities comparable to those of humans should not be their property, should be accorded rights through which to protect themselves from humans, and should have legal standing to use the judicial system to enforce those rights.<sup>7</sup>

Others deny that animal rights can or should include freedom from human exploitation.<sup>8</sup> In actuality, most legal efforts are not dedicated to animal “liberation” and most often focus on reducing the suffering that animals endure as they are turned into consumption goods.<sup>9</sup> That may be guided partially by extra-legal activism for animals that is based on improving their lives, which is seen as more realistic and compelling in the near term than is a goal of liberation.<sup>10</sup> In 1967, the United Kingdom’s Farm Animal Welfare Council, for example, identified “five freedoms” that all farm animals should enjoy: to be able to “stand up, lie down, turn around, groom themselves and stretch their limbs”—“freedoms” inconsistent with the intensive confinement methods now used by exploitative industries.<sup>11</sup> The guidelines since have been reformulated to provide for the “five freedoms” of freedom from thirst and hunger, from discomfort associated with lack of adequate shelter, from pain, injury, and diseases that can be prevented or treated, from avoidable fear and distress, and the freedom to express normal behaviors by providing

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Univ. Press 1995); *see also* Gary L. Francione, *Rain Without Thunder: The Ideology of the Animal Rights Movement* (Temple Univ. Press 1996) [hereinafter *Rain Without Thunder*]; *see also* Gary L. Francione, *Introduction to Animal Rights: Your Child or the Dog?* (Temple Univ. Press 2000).

7. *See generally* Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* (1st ed. Perseus Books, 2000) (arguing that chimpanzees and bonobos have capacities sufficiently comparable to humans to warrant the extension of rights to them); Steven M. Wise, *Drawing the Line: Science and the Case for Animal Rights* (Perseus Books 2002) (arguing that as science reveals capacities of nonhuman animals to be like those of human animals, rights should be extended to include them). Steven M. Wise has written many articles and books directly relevant to this topic. The above two books set out his argument about the moral and legal basis for at least some nonhuman animals to have rights, including the right to sue.
8. *See* Richard L. Cupp, Jr., *A Dubious Grail: Seeking Tort Law Expansion and Limited Personhood as Stepping Stones Toward Abolishing Animals’ Property Status*, 60 SMU L. Rev. 3 (2007) (arguing that animal “rights” are unnecessary to improve the treatment of animals and that giving animals “rights” degrades the status of humans); Jonathan Lovvorn, *Animal Law in Action: The Law, Public Perception, and the Limits of Animal Rights Theory as a Basis for Legal Reform*, 12 Animal L. 133 (2005–2006) (arguing that animal activists who seek animal “liberation” are wasting time while animals suffer and are delaying progress on their behalf).
9. Gary L. Francione, *Reflections on Animals, Property, and the Law and Rain Without Thunder*, 70 L. & Contemp. Probs. 9 (2007) (arguing that as a general matter, and not just as to farmed animals, “animal welfarism” is most often pursued by lawyers representing animals’ interests but that animal welfarism has not advanced the interests of animals).
10. *Id.*
11. Peter Singer, *Animal Liberation* 142–145 (Harper Collins 1975) (discussing the development of the “five freedoms,” scientific confirmation of domestic animals’ need for those freedoms, and that flesh food producers do not have economic incentives to treat animals well).

animals with adequate housing conditions.<sup>12</sup> However, only the more limited conception of freedoms has gained any traction at all, as, for example, when California voters decided in 2008 to phase out some intensive confinement methods of housing certain farmed animals.<sup>13</sup> Given how badly animals are treated now, even the most basic “five freedoms” are radical as a matter of the economics of compliance and our expansive ideology of entitlement associated with property ownership. Yet, the pursuit of goals such as the “five freedoms” is not at the radical extreme because it does not challenge the fundamental human entitlement to exploit animals.

When discussing the Duke Animal Law Clinic funded with Barker aid, Jeff Welty, the clinic’s first director, explained the distinction between the pursuit of animal rights as legal standing for animals that is inconsistent with their legal status as property and the pursuit of animal rights as “animal welfare, which deals with the well-being of and prohibition against cruelty to animals.”<sup>14</sup> He noted that students would get to learn about the legal spectrum encompassed by the term “animal rights” but that “[m]ost of the clinical placements have nothing to do with animal rights [in the sense of seeking legal standing for animals] but are efforts to protect animals through conventional means.”<sup>15</sup> This approach appears to be fairly representative of the way “animal rights” law ideas are presented at Barker-endowed law schools. In fact, since expenditures of endowment interest income must be approved by administrators, who, most likely, do not hold a particularly radical view of animal rights, there are institutional constraints on the purposes for which this funding will be used.

Besides the animal rights law classes Barker funds at law schools, he also created an animal rights educational endowment fund at Drury University, his alma mater and that of his late wife. The Drury University Forum on Animal Rights is the first such endowment at the undergraduate level in the United States. Its purpose is to expose students to questions about the ethical treatment of animals from different perspectives, including philosophy, environmental protection, biology, religion, and law.<sup>16</sup> As I discuss in more detail later, both gifts to education are important for the development of animal law.

As these law school and undergraduate gifts indicate, Barker clearly believes in the transformative power of education, his optimism rooted, perhaps, in personal experience. From childhood, Barker had an affinity for individual

12. Farm Animal Welfare Council, Five Freedoms, <http://www.fawc.org.uk/freedoms.htm> (last visited June 21, 2010).

13. Proposition 2 on the California ballot of November 2008 called for phasing out by 2015 battery cages for egg-laying hens, veal crates, and gestation crates for sows. Proposition 2, which passed by a large majority, is codified at Cal. Health & Safety Code sections 25900–25994 (West Supp. 2009). For background on Proposition 2, see generally Jonathan R. Lovvorn & Nancy V. Perry, California Proposition 2: A Watershed Moment for Animal Law, 15 *Animal L.* 149 (2009).

14. Animal Law Clinic Launched, *Duke Law Magazine*, Spring 2006, at 27.

15. *Id.*

16. Barker, *supra* note 2, at 237.

dogs and other animals with whom he became friends,<sup>17</sup> but he underwent many significant changes in his personal beliefs and behaviors as a result of learning as an adult about the terrible suffering that animals endure for the benefit of human consumption and pleasure. Barker, for instance, once gave his wife furs as gifts.<sup>18</sup> But when he learned about the agonies suffered by wild animals in fur production, he not only refrained from such gifts, he ultimately resigned from hosting the Miss USA and Miss Universe beauty pageants—a financially rewarding role he enjoyed—because furs were given as prizes.<sup>19</sup> Taking his advocacy beyond simply altering his own behavior and foregoing professional opportunities, Barker also has led anti-fur marches to deter holiday gift shoppers from buying furs.<sup>20</sup>

This is but one example of his ability to take in information about the unnecessary, human-inflicted suffering of animals, to make personal changes—many of which involve professional sacrifices—and then to carry his advocacy further as an outspoken defender of animals' rights to be free of human exploitation.<sup>21</sup> His law school gifts reflect an expectation that others, too, will experience transformative effects from education about the nature of animals and the terrible suffering that is unnecessarily inflicted on them by humans.

In addition to his wife's influence, Barker credits his volunteer work with nonprofit animal protection and advocacy groups for his education about the many ways in which humans inflict suffering on animals.<sup>22</sup> Over the years, he has supported many such groups with his time, energy, and financial contributions.<sup>23</sup> Moreover, he established his own animal-related foundation, the DJ & T Foundation, named for his late wife, Dorothy Jo, and his late mother, Matilda (known as Tilly). The DJ & T Foundation fulfills what Barker calls his main advocacy project:<sup>24</sup> assisting organizations throughout the United States with funding for spay/neuter programs to reduce the killing of companion animals in shelters and the number of unwanted, homeless companion animals who “suffer unbearably during their lifetimes. They contract diseases. They are injured, attacked, hit by cars, sold into research, and worse.”<sup>25</sup>

17. *Id.* at 143.

18. *Id.* at 193.

19. *Id.* at 189.

20. *Id.* at 201.

21. Barker describes some other situations as follows: “I was fired from two radio shows for speaking out against laboratory research on animals. In the early 1980s, I...had also resigned as host of the American Humane Association's Patsy Awards show, which honors animal actors and their trainers, when I learned that some trainers beat animals unmercifully to make them perform.” *Id.* at 195.

22. *Id.* at 194.

23. Madigan, *supra* note 1, at B13.

24. Barker, *supra* note 2, at 223.

25. *Id.* at 222.

If Barker credits such organizations with educating him about the extent of animal cruelty in our society, why would he not make *all* of his donative investments in education by supporting such organizations and causes? Those seem to be more direct and predictable avenues to address exploitation of animals and to educate the public about the human-inflicted suffering of animals, as compared to law school courses on animal rights law.

Barker, however, likely chose to support law school education because of his knowledge of the legal system and its current limitations in addressing the suffering experienced by animals. He certainly knows that little can be done under current laws to alleviate the suffering of animals used in research and in the production of animal-based consumption products such as eggs, milk, meat, and leather.<sup>26</sup> There are few laws and what few there are lack meaningful enforcement mechanisms.<sup>27</sup> His own experiences with the legal system also could not have been encouraging. For example, he initiated legal investigations into what he deemed cruel training to force chimpanzees to “act” in the movie *Project X*.<sup>28</sup> According to Barker’s attorney at the time, sufficient evidence existed,<sup>29</sup> but the trainers were not prosecuted for cruelty because the statute of limitations had expired.<sup>30</sup> Barker claimed success in the court

26. *Id.* at 236 (“Our present federal, state, and local laws are inadequate, and frequently they are not stringently enforced.”).

27. The federal Animal Welfare Act pertains to very few of the animals used in research, focuses only on some aspects of housing animals, leaves research design up to researchers even when tremendous levels of pain will be inflicted, and is only minimally enforced. Darian Ibrahim, Reduce, Refine, Replace: The Failure of the Three R’s and the Future of Animal Experimentation, 2006 U. Chi. Legal F. 195. Similarly, state anti-cruelty statutes are ineffective to reach all but totally gratuitous, senselessly inflicted animal suffering. Institutionalized means by which animals are caused tremendous suffering, mutilation, and death are either explicitly or implicitly exempted. Darian Ibrahim, The Anticruelty Statute: A Study in Animal Welfare, 1 J. Animal L. & Ethics 175 (2006); A Return to Descartes: Property, Profit, and the Corporate Ownership of Animals, 70 L. & Contemp. Probs. 89 (2007). David J. Wolfson and Mariann Sullivan are the authorities on farmed animal law. Among their publications recounting the insufficiencies of legal protection for factory-farmed animals are, Foxes in the Hen House: Animals, Agribusiness, and the Law: A Modern American Fable, in *Animal Rights: Current Debates and New Directions* 205-233 (Cass R. Sunstein & Martha C. Nussbaum, eds., Oxford Univ. Press 2004); What’s Good for the Goose: The Israeli Supreme Court, Foie Gras, and the Future of Farmed Animals in the United States, 70 Law and Contemp. Problems 139-75 (2007); and The Regulation of Common Farming Practices, in *Animal Law and the Courts: A Reader* (Taimie L. Bryant, Rebecca Huss & David Lassuto, eds., West 2008).

28. Barker, *supra* note 2, at 228-29.

29. Gary L. Francione, Animal Rights and Animal Welfare, 48 Rutgers L. Rev. 397, 434 (“Barker caused charges to be filed with the Los Angeles District Attorney’s office, which referred the matter to the Los Angeles Department of Animal Regulation. It was determined that animals had been abused in the making of the movie.... The author was counsel to Mr. Barker.”).

30. Barker, *supra* note 2, at 229.



of public opinion,<sup>31</sup> but he was ultimately unsuccessful in seeking criminal prosecution. Moreover, he was sued for defamation by the American Humane Association, which Barker has criticized as failing to properly monitor the treatment of the chimps used for *Project X* as well as other animals used in movies and television.<sup>32</sup>

Despite his knowledge of how unhelpful current law is to protect animals and how inadequately even minimally helpful laws are enforced, Barker, an optimist, believes in moving forward no matter how far back the starting point may be—and other of his experiences with legal reform have been positive enough to support that belief. In the 1980s, in collaboration with Nancy Burnet of United Activists for Animal Rights, Barker successfully pursued the enactment of amendments to the California Penal Code to provide for felony conviction for animal cruelty.<sup>33</sup> He has continued to work on a range of legislative projects. He joined others in pursuing spay/neuter legislation in Los Angeles,<sup>34</sup> and he is assisting in legislative efforts to ban pigeon shoots in Pennsylvania, where the Humane Society of the United States (HSUS) estimates that 22,000 live birds are used annually as targets for shooting events.<sup>35</sup>

Barker believes that donating to law schools for animal rights law research and teaching is a potentially effective means to generate legal change.<sup>36</sup> He believes that education in animal rights law will prove useful to lawyers taking on animal-related cases in their practice, to judges hearing such cases, and to lawyers who become legislators.<sup>37</sup> His hope is that “graduates of these eight law schools who go into politics will be inspired to introduce legislation helpful to the long-suffering animals.”<sup>38</sup> In an interview I conducted with him in September, 2009, Barker described additional factors that influenced his choice of the law schools he endowed. He said he hoped to make animal rights law accessible to students in all parts of the country. Therefore, he gave thought to geographical distribution of his gifts. He also selected schools he believes will serve as leaders in establishing animal rights law courses as legitimate, useful additions to curricula at all law schools, including those that have not

31. *Id.* (“To this day, whenever someone hears *Project X*, they think of the chimps and the cruelty involved with the filming of that movie. Score one for the Burnet/Barker duo!”).

32. *Id.* Barker’s insurance company later settled with AHA. CBS News, *Animals Harmed in Movies? AHA: We’re Effectively Monitoring the Industry*, March 13, 2001, *available at* <http://www.cbsnews.com/stories/2001/03/13/eveningnews/main278577.shtml> (last visited August 13, 2010).

33. Barker, *supra* note 2, at 230–31.

34. *Id.* at 238.

35. Wayne Pacelle, *Bob Barker Joins Efforts To Stop Pa. Pigeon Shoots*, Feb. 1, 2010, <http://hsus.typepad.com/wayne/2010/02/bob-barker-pigeons.html> (last visited Jun. 20, 2010).

36. Madigan, *supra* note 1, at B7.

37. Barker, *supra* note 2, at 236.

38. *Id.* at 236–237.

received his gifts. Finally, since two of the schools (Duke and UCLA) already offered animal rights law on a regular basis, his gifts also serve the purpose of creating a mandate that the courses continue, even if faculty particularly committed to the area of animal rights law retire or move away. Students can apply to a law school with a Barker gift knowing they can take an animal rights law course even if a particular faculty member is no longer there.

It now has been nine years since the first gift went to Harvard Law School by Pearson Television. The 2004 donations went to UCLA,<sup>39</sup> Duke,<sup>40</sup> Stanford,<sup>41</sup> and Columbia.<sup>42</sup> More recently, gifts also have gone to Northwestern (2005),<sup>43</sup> Georgetown (2006),<sup>44</sup> and the University of Virginia (2009).<sup>45</sup> Although it is difficult to identify from publicly available information all of the current uses of Barker endowment interest income,<sup>46</sup> it is apparent that recipient law schools use the aid for a variety of animal law activities.

The Barker gifts, in boosting students' opportunities to learn about animal rights, directly support their participation in: animal law moot courts, such as the Harvard Law School program each spring; student externships to work for nonprofit organizations involved in legal advocacy for animals; and student research on animal law topics. Students at some schools may work on animal law-related cases in clinical classes. Duke launched the first Barker-funded

39. UCLA Law School, Television Personality Bob Barker Donated \$1 Million to the UCLA School of Law To Create the Bob Barker Endowment Fund for the Study of Animal Rights Law, Nov. 4, 2004, <http://www.law.ucla.edu/home/News/Detail.aspx?page=20&recordid=51> (last visited Jun. 20, 2010).
40. Office of News & Communications, Duke University, TV Personality Bob Barker Donates to Duke Law School for Animal Rights Law Study, Dec. 6, 2004, [http://news.duke.edu/2004/12/barker\\_1204.\\_print.ht](http://news.duke.edu/2004/12/barker_1204._print.ht) (last visited Jun. 20, 2010).
41. Animal Rights Endowment, Briefs, Stanford Lawyer Magazine, Fall 2005, at 6.
42. Columbia Law School, Bob Barker Awards Columbia Law School \$1 Million To Support the Study of Animal Rights, [http://www.law.columbia.edu/media\\_inquiries/news\\_events/2005\\_older/2004/nov/bobbarker\\_gift](http://www.law.columbia.edu/media_inquiries/news_events/2005_older/2004/nov/bobbarker_gift) (last visited Jun. 20, 2010).
43. Northwestern University, Bob Barker Gift Endows Animal Rights Law Course, <http://www.northwestern.edu/newscenter/stories/2005/03/barker.html> (last visited Jun. 20, 2010).
44. Georgetown University Law Center, Bob Barker Donates \$1 Million to Georgetown Law for Study of Animal Rights Law, <http://www.law.georgetown.edu/news/releases/may.4.2006.html> (last visited Jun. 20, 2010).
45. Virginia Law, Bob Barker Donates \$1 Million for Creation of Animal Law Program, [http://www.law.virginia.edu/html/news/2009\\_spr/barker\\_gift.htm?open&ntype=csi](http://www.law.virginia.edu/html/news/2009_spr/barker_gift.htm?open&ntype=csi) (last visited Jun. 20, 2010).
46. It is difficult to know what is funded by Barker gifts. He receives information from recipient institutions, but even those reports, compiled by development officers, may not contain details on all expenditures because some could be posted against the Barker endowment interest income without the knowledge of fund-raising offices. Stanford Law School students, for example, produce the Stanford Journal of Animal Law and Policy, but it is unclear whether the Journal receives support from the Barker funds. At UCLA Law, Barker funds go toward animal law research conducted by student researchers but may not be reported directly to the UCLA Development Office.



clinic on animal law, in addition to classroom-based courses in animal law.<sup>47</sup> Georgetown offers a full-time post-graduate fellowship to work for one year in the legal department of the HSUS.<sup>48</sup> The University of Virginia developed the first Barker-funded writing competition for students, the Bob Barker Prize in Animal Law, Ethics, and Rights Student Writing Competition, which carries a \$2,500 award.<sup>49</sup> The competition, open to all graduate students at the University of Virginia, provides an incentive to scholars in a variety of departments to examine legal aspects of animal-related subjects they might not have explored from a legal perspective.

Barker funds also underwrite conferences, workshops, and public presentations on animal rights legal issues. At Columbia, where animal rights law is taught every year, Barker funds have supported a feminist theory workshop on animal use and treatment,<sup>50</sup> as well as a panel with two Israeli Supreme Court Justices who spoke about the subject of the Court's decision in 2006 to ban the force-feeding of geese for the production of foie gras in Israel.<sup>51</sup> Similarly, at Duke, in addition to the animal law class, advocates have run conferences on animals and bioengineering,<sup>52</sup> and contemporary animal law and policy.<sup>53</sup> UCLA offers at least one animal rights law class every year and has used Barker funds for a workshop that resulted in an animal law reader, which was produced with the use of Barker funds and involvement of student research assistants.<sup>54</sup> Georgetown used Barker funds for a conference

47. Animal Law Clinic Launched, *supra* note 14.

48. Ann W. Parks, Web Story: "From the Horse's Mouth": Animal Law Conference gives Perspectives on Animals, Law and Policy, <http://www.law.georgetown.edu/news/webstory/4.1.09.html> (last visited Jun. 19, 2010); 2009 Barker Fellowship in Animal Law, <http://www.law.georgetown.edu/OPICS/fellowships/documents/barker09.doc> (flyer announcing fellowship) (last visited Jun. 19, 2010).

49. Letter to Mr. Barker from Dean Paul Mahoney, Professor Mimi Riley, and Mr. Luis Alvarez, Jr. of the University of Virginia Law School Foundation, Nov. 21, 2008 (on file with author).

50. Animal Use and Animal Treatment, Columbia Law School, [http://www.law.columbia.edu/media\\_inquiries/news\\_events/2007/march07/animalrights](http://www.law.columbia.edu/media_inquiries/news_events/2007/march07/animalrights) (last visited Jun. 21, 2010).

51. Columbia Law School, Israeli Justices Speak on Foie Gras Decision, Sept. 18, 2007, [http://www.law.columbia.edu/media\\_inquiries/news\\_events/2007/september07/israelfoiegras](http://www.law.columbia.edu/media_inquiries/news_events/2007/september07/israelfoiegras) (last visited Jun. 21, 2010).

52. Duke Law School, Animals & Bioengineering: A Consideration of Law, Ethics and Science, <http://www.law.duke.edu/aba-animalconference> (last visited Jun. 21, 2010); Webcast, Animals and Bioengineering: A Consideration of Law, Ethics, and Science Part 1, <http://www.law.duke.edu/webcast/?match=Animal+Law+Conference> (last visited Jun. 21, 2010).

53. Flyer for Duke University School of Law Animal Law Conference, <http://www.law.duke.edu/journals/lcp/articles/animalawconference.pdf> (last visited Jun. 21, 2010); Webcast, *supra* note 52.

54. Taimie L. Bryant, Rebecca J. Huss & David N. Cassuto, *Animal Law and the Courts: A Reader* (West 2009).

on animals, law, and policy in the United States, in addition to offering a seminar on animal protection litigation taught by the head of the litigation division of the HSUS.<sup>55</sup>

Although it has been nine years since the first endowment for animal rights law, it is probably still too early to predict how the gifts, ultimately, will be used. Most of the donations occurred in 2004 and a few were given later still. Some universities require the payment of gift administration fees, which, while payable immediately from non-Barker law school funds, might be subsequently covered with early years of Barker endowment interest income. It also takes time for some uses to be developed and approved. If a school intends to hire an executive director to manage an animal law program or to put in place expensive options for students, it may be necessary to allow the Barker interest income to accumulate before the program or clinical component can be fully established.<sup>56</sup> Clinical educational opportunities, in particular, must be planned with care, and the approval process can take a while. Georgetown was unusually well-situated to deploy Barker funds relatively quickly for a variety of purposes besides staffing an animal rights law class. It has geographical proximity to the HSUS, which has an active litigation department headed by a talented attorney, Jonathan Lovvorn. Lovvorn has been teaching a seminar and helped to establish a post-graduate fellowship at the HSUS for Georgetown Law graduates.<sup>57</sup> Georgetown was also able to attract additional donations for animal law educational opportunities.<sup>58</sup> In short, educators still are writing the record of how Barker gifts will be used. These donations are still relatively fresh, new opportunities and their uses undoubtedly will increase; as the academic field of animal law gains momentum, law school administrators will more easily identify animal rights law opportunities that work best at their schools.

Just as it is difficult to predict future uses of income from Barker gifts, it is difficult just now to assess their relationship to the development of animal rights law. In an insightful article tracing the history of the field, Joyce Tischler, an attorney who founded the Animal Legal Defense Fund, identifies 1972 as the start of “attorneys consciously consider[ing] animal-related legal issues from the perspective of the animal’s interests, when they began to view the animal as the *de facto* client, and where the goal was to challenge institutionalized

55. Parks, *supra* note 48.

56. For instance, Northwestern assessed the cost of a variety of potential uses of the Barker funds and concluded that offering a clinic could entail costs of \$100,000. Letter to Mr. Barker from Professor David E. Van Zandt, Dean of Northwestern University School of Law, Mar. 22, 2006 (on file with author).

57. Meredith Eckstut, New Animal Rights Course Developed, *Geo. L. Wkly.*, Apr. 17–23, 2007, at 1.

58. Letter to Barker from Professor T. Alexander Aleinikoff, Dean of Georgetown University Law Center, dated June 4, 2009 (on file with author).

forms of animal abuse and exploitation.”<sup>59</sup> She dates the first animal rights law course to 1977, taught by Theodore Sager Meth, an adjunct at Seton Hall,<sup>60</sup> and notes that animal law courses were rare until the 1980s.<sup>61</sup>

The number of animal law classes increased markedly in the 1990s.<sup>62</sup> Aside from exceptions such as Rutgers (Newark), Duke, Michigan State University, and UCLA—all schools where animal law classes were first initiated by interested tenured or tenure-track faculty—most other law schools started offering classes in response to student demand.<sup>63</sup> The Animal Legal Defense Fund [ALDF] has from its beginning supported student interest in the field by encouraging the development of groups either as Student Animal Legal Defense chapters or as affiliated student animal law groups.<sup>64</sup> The Animal Legal Defense Fund also has provided assistance to those seeking to establish or preparing to teach new animal law courses.<sup>65</sup>

The publication of the first animal law casebook in 2000, now in its fourth edition, co-edited by Bruce Wagman, Sonia Waisman, and Pamela Frasch, gave a tremendous boost to the developing academic field. Law school administrators and faculty considering animal law classes now could have reasonable expectations of a well-developed course, due to the existence of this high-quality casebook.<sup>66</sup> Since many animal law classes are taught by adjuncts who may lack the time or experience necessary to develop a complete set of teaching materials, it would be difficult to overstate the importance of having such a good casebook in the field. Now there are two good casebooks from which to choose.<sup>67</sup>

59. Joyce Tischler, *The History of Animal Law, Part I (1972–1987)*, 1 *Stan. J. Animal L. and Pol’y* 1, 3 (2008), available at <http://sjalp.stanford.edu/pdfs/Tischler.pdf>.

60. *Id.* at 10.

61. *Id.* at 24. (“In 1981, there were no animal law classes or law student groups, no casebooks or animal law committees of bar sections...”).

62. Bruce A. Wagman, *Growing Up with Animal Law: From Courtrooms to Casebooks*, 60 *J. Legal Ed* 193 (2010).

63. Paria Kooklan, *Animal Law Gaining Ground in the United States*, 36 *Student Lawyer* 6 (2008) (quoting Pamela Alexander of the Animal Legal Defense Fund), available at <http://www.aldf.org/article.php?id=598&printsafe=1>.

64. *Id.* (“In addition to litigating on behalf of animals, [ALDF] runs an Animal Law Program with the goal of getting every law school in America to offer an animal law course. Part of the way it hopes to achieve this is by chartering and providing support for [Student ALDF] chapters...”).

65. The Animal Legal Defense Fund has, for many years, assisted interested faculty with syllabi and other course materials. On March 15, 2010, it launched a password-protected website specifically to assist animal law teachers.

66. Bruce A. Wagman, Sonia S. Waisman & Pamela D. Frasch, *Animal Law: Cases and Materials* (4th ed., Carolina Academic Press 2010).

67. David S. Favre, *Animal Law: Welfare, Interests, and Rights* (Aspen 2008).

A body of scholarship in the field also had grown by the time of the Barker gifts. Tischler credits an article written by Professor David Favre in 1979 as one of the first with an animal rights concept.<sup>68</sup> Favre presented a view of wild animals as individuals, thereby providing an alternative perspective to them only as groups or species, as they are most frequently considered in the environmental law context.<sup>69</sup> Another benchmark: Professor Gary L. Francione's 1995 book, *Animals, Property and the Law*, in which he identified the consequences for animals of their legal status as the property of humans and the potential for legal reform as dependent on elimination of that status.<sup>70</sup> And, in 2000, the year before the first Barker endowment, Steven M. Wise published the book, *Rattling the Cage: Toward Legal Rights for Animals*, which stimulated great interest in animal rights both in and outside of academic circles.<sup>71</sup> By the time of the first Barker endowment, there was also a journal dedicated to the topic, and *Animal Law* has been published at Lewis & Clark Law School since 1995.<sup>72</sup> Professor David Favre also has maintained his exceptionally useful animal law database at the Michigan State University College of Law.<sup>73</sup>

Since law school courses depend on the existence of legal materials to discuss, it also is extremely significant that there has been steady growth in the number and type of lawsuits filed to protect animals. The Animal Legal Defense Fund is the oldest organization dedicated to animal rights-oriented civil litigation, facilitating prosecution of animal cruelty under state criminal anticruelty statutes, and development of animal-protective laws.<sup>74</sup> Other major animal protection organizations, such as the HSUS, have legal departments that also generate model laws, propose amendments to existing laws, bring litigation on behalf of animals, and submit *amicus curiae* briefs.<sup>75</sup>

68. Tischler, *supra* note 59, at 14 n.86.

69. See David Favre, Wildlife Rights: The Ever Widening Circle, 9 *Env'tl L.* 241 (1979).

70. Francione, *Animals Property & the Law*, *supra* note 6; see also Francione, Rain Without Thunder, *supra* note 6 (describing different legal approaches to increasing protection for animal interests and making the case for the approach of abolishing the legal status of animals as property).

71. Wise, *supra* note 7 (arguing that animals should not be the legal property of humans and that the best place to begin eliminating that status is by securing rights for chimpanzees and bonobos). Wise describes the extent to which the book "attracted attention from judges, lawyers, scientists, and environmentalists around the world." Steven M. Wise, *Rattling the Cage Defended*, 43 *B.C. L. Rev.* 623, 623 (2002).

72. The journal now is called *Animal Law Review*. See Law Review Website, [http://www.lclark.edu/law/law\\_reviews/animal\\_law\\_review/](http://www.lclark.edu/law/law_reviews/animal_law_review/) (last visited June 30, 2010).

73. Michigan State University College of Law: Animal Legal & Historical Web Center <http://www.animallaw.info/> (last visited Jun. 21, 2010).

74. Tischler describes many of ALDF's and other organizations' earliest cases. See Tischler, *supra* note 59. A description of legal advocacy for nonhuman animals in which the Animal Legal Defense Fund is currently engaged is available at <http://www.aldf.org/section.php?id=4>.

75. A description of legal work undertaken by the HSUS is available at <http://www.humanesociety.org/issues/campaigns/>. The ALDF and HSUS are just two of the organizations that have in-house legal departments as well as using outside legal counsel

In short, Barker's gifts were well-timed to further stimulate the growth of a field that was beginning to take off. Animal law now is taught at more than one hundred law schools in the United States,<sup>76</sup> and there are five journals dedicated to animal law subjects.<sup>77</sup> On the legal practice side, there are multiple state and local bar association animal law committees, the American Bar Association has a committee dedicated to animal law issues,<sup>78</sup> and advocates are forming an Association of American Law Schools Animal Law Section.<sup>79</sup> Some of these organizations conduct continuing legal education programs or provide legal materials on animal law subjects.

In the context of a rapidly developing field, it is impossible to isolate the contributory effects of one particular stimulus, such as the Barker gifts. Their short- and long-term effects will be difficult to measure. While the gifts may prove over time to have helped law schools accomplish more than he expected, Barker's stated goal was only to ensure the opportunity for students to take animal rights law courses, with the hope that many would carry forward into their professional careers a willingness to pursue legal change to benefit animals. To accomplish that goal, he needed to time the market for his gifts. If the field had not developed sufficiently to give law school administrators confidence that it was possible to staff an animal rights law course and to provide a substantively rich educational opportunity to students, it is possible that Barker's offers would have been rejected. To gain acceptance by law school administrators, the timing of the gifts had to be right, the extent of restrictions on the gifts had to be right, and the price had to be right. That his gifts were accepted by eight law schools indicates that he had assessed all of those factors correctly.

Since there were high expectations when the gifts were announced,<sup>80</sup> it is worth considering their apparent limitations as to the narrower goal of student

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for particular projects. As Tischler points out, there are also law firms such as Meyer & Glitzenstein in Washington, D.C. that handle animal law litigation for individual clients and for organizational clients such as animal protection and advocacy nonprofits. Tischler, *supra* note 59, at 48.

76. Kooklan, *supra* note 63.

77. Animal Law Review (Lewis & Clark Law School), Animal Law Journal (Michigan State University College of Law), Journal of Animal Law and Ethics (University of Pennsylvania Law School), Stanford Journal of Animal Law & Policy (Stanford Law School), and Journal of International Wildlife and Policy (Whittier Law School).

78. Animal Law Committee, ABA, <http://www.abanet.org/tips/animal/> (last visited Jun. 21, 2010).

79. The Animal Law Section currently has provisional status as an AALS section but has applied for permanent status.

80. See Kelly Wilson, *Catching the Unique Rabbit: Why Pets Should Be Reclassified as Inimitable Property Under the Law*, 57 Clev. St. L. Rev. 167, 175 (2009) (including the Barker gifts in a description of "developments [that] demonstrate that significant changes may be forthcoming in the area of animal law"). See also Terry Carter, *Beast Practices: High-Profile Cases Are Putting Plenty of Bite into the Lively Field of Animal Law*, ABA J. 38, 42 (stating that the Barker gifts "suggest that Barker wants to create an influential animal

opportunities and as to the larger issue of field development. After briefly appraising this issue, I will consider how some of those apparent limitations may be directly related to specific difficulties associated with law schools' acceptance of the gifts. Further, I suggest, apparent limitations in scope and effect of the gifts may be temporary and more than offset by benefits derived from them.

As to student opportunities to take classes in animal law, the picture is complicated because elective choices may be constrained by structural features of a law school curriculum and course staffing issues. Although the Barker gifts mandate the continued existence of animal rights law courses at recipient schools, the degree to which students can and will take the classes is highly variable. At UCLA Law School, for example, there are "tracks" in a number of areas such as business law, critical race studies, law and economics, law and philosophy, environmental law, international and comparative law, Native nations law, and entertainment and media law. Each track requires classes that students must take if they want their degrees to indicate a concentration in the subject area. We also have time- and unit-intensive clinical courses. All these opportunities are high quality and in high demand among students. Without an association with one or more programs at the Law School, however, animal law becomes a bit of an orphan; students who might have interest in it may not be able to fit it into their schedules while also meeting track requirements and taking a certain number of bar-related courses.

Students at other law schools also surely make similar such decisions among different priorities associated with their legal education. Post-graduate employment usually is a priority, and, for now, students cannot see how they could earn a living practicing animal law exclusively. Obviously, animals are differently situated from human clients; they cannot seek out or pay lawyers to advocate on their behalf. There are some animal protection and advocacy organizations—such as the Humane Society of the United States, the Animal Legal Defense Fund, the Physicians Committee for Responsible Medicine, and People for the Ethical Treatment of Animals (PETA)—that pursue animal-protective litigation and other legal advocacy projects. Those organizations generally prefer to hire attorneys with some experience in practice. So, even if students want to pursue animal law work at some point, their immediate objective most likely will be to get a job without much opportunity to practice animal law. And students likely then will put a priority on courses with utility or competitive advantage to win that first job.

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law community"); see T. Christopher Wharton, *Fighting Like Cats and Dogs: The Rising Number of Custody Battles Over the Family Pet*, 10 J.L. & Fam. Stud. 433, 440 (2008) (agreeing with and quoting Carter); see Gerald L. Eichinger, *Veterinary Medicine: External Pressures on an Insular Profession and How Those Pressures Threaten To Change Current Malpractice Jurisprudence*, 67 Mont. L. Rev. 231, 263 (2006) (including the Barker gifts in an enumeration of indications that the animal law movement is gaining momentum); see Richard L. Cupp Jr., *supra* note 8 (including the Barker gifts in a list of events that indicate an explosion in the growth of animal rights law).



If students actually understood the range of legal subjects covered in an animal law course, however, they might take it to better understand how the law works in a variety of substantive areas and as preparation for practice. Students may, for example, more readily master basic features of administrative law as they learn about efforts to curtail the legal privilege of animal exploitative industries that are regulated by state and federal agencies. Similarly, many general criminal law issues must be considered when students learn about animal cruelty prosecutions under state anti-cruelty statutes. Many aspects of tort law must be examined when students learn about causes of action and remedies that may or may not be available when animals are harmed. Constitutional law issues come up when considering legal standing to bring lawsuits on behalf of animals, and First Amendment claims arise in contexts as varied as the federal law restricting production and ownership of depictions of animal cruelty,<sup>81</sup> claims of defamation against animal protection groups that seek to educate the public about abuses and exploitation of animals, and prosecution of animal advocates who “harass” hunters.

Despite the advantages to students in learning about different areas of law by way of animal law, those who teach animal law courses encounter difficulties. Some arise because students know so little at the outset about the facts of animal exploitation. Much time in an animal law class must be spent covering basic non-legal, factual information about how industrial exploiters treat animals. Many students report that they were totally unaware of many of the exploitative practices that cause tremendous suffering until they learned about them in an animal law class. More could be accomplished in an animal law class if students entered with more background knowledge. That is why the development of animal studies classes at the undergraduate level is so important. Students exposed to such classes may learn enough about animal exploitation and the insufficiencies of the law to be sufficiently motivated to apply to law school in the first place and then to make the most of all their courses, not just animal law, while they are there.<sup>82</sup> That deeper base of knowledge when they enter law school may result in greater student interest in taking a clinical animal law class or working on specific projects that pertain

81. Although providing for numerous exceptions, 18 U.S.C. § 48 prohibits the manufacture, possession with intent to sell, and sale of depictions of animal cruelty. The Third Circuit decided that the law violates the First Amendment. *U.S. v. Stevens*, 533 F.3d 218 (3rd Cir. 2008). The U.S. Supreme Court affirmed on grounds of unconstitutional overbreadth.

82. This would depend on the nature of the animal studies class. Some classes may focus on aspects of animals in society, religion, literature, and history that have little to do with the exploitation of animals. Other classes may provide considerable information and opportunities to debate issues connected to humans’ infliction of suffering on animals. Barker’s gift to Drury University for an animal rights forum reflects attention to this distinction between the types of classes that could be offered.

to information they acquired earlier.<sup>83</sup> Thus, gifts such as Barker's to Drury University for an animal rights forum perfectly complement his law school donations.

General ignorance about how animals are treated in our society adversely affects student interest in animal law classes for two additional reasons. First, classmates may more readily trivialize the subject if most law students do not know about the truly severe and unnecessary suffering inflicted on animals. Even if students do not take such an undergraduate course, the existence of animal protection or animal studies classes at the undergraduate level signals a degree of respect for the subject. That also holds true to some extent as to the existence of animal law classes. However, the effect may be more pronounced in both educational contexts, if the subject is available at the undergraduate level. It is generally understood that one function of undergraduate education is exposure to new subjects and to value-forming discussions with faculty, other students, friends, and family about ethical issues; undergrads and their parents, then, should not be surprised to see courses that consider animals from different ethical perspectives. And law students, with some exposure to the topic as undergrads, should not be surprised to see a law school course about animal law.

Second, exposure during college years to realities that some people find painful, such as the extent and type of suffering humans inflict on animals, might allow students to come to terms with that disturbing information so it hinders them less from taking an animal law course in law school. A number of students have told me they would not take a class on animal law because they worry about reading painful material on animal suffering, information that would be difficult for them to digest on first exposure or might distract them from their needed focus on law school courses with more immediate applicability to their career goals.

Some students drop the course once they learn it covers laws pertaining to the treatment of animals raised for food. They say the class materials will call into question practices they know they do not wish to change. Barker, in contrast, sought out information and used it to make more compassionate decisions in his life. He may not fully appreciate how courageous and unusual that is and that the reach of animal law classes may be limited by students' interests, professional goals, backgrounds, and capacities to work with emotionally draining information than would be ideal for developing the sensitivity and follow-through in professional decisions that would benefit animals.

The position of animal law in academia poses other hindrances to full or speedy realization of Barker's goals. Academics no longer see animal law as quite the fringe subject it was ten years ago, but it is still marginalized in teaching and in scholarship. In 2003, Professor Rebecca Huss, a member

83. A good example of this is provided by Paria Kooklan when she describes Alexis Fox who entered law school after developing an interest in helping animals, based on educational experiences she had at the undergraduate level. Kooklan, *supra* note 63.

of the faculty of Valparaiso University School of Law, became the first legal academic in the United States to be advanced to tenure with a scholarly portfolio consisting exclusively of articles about animal law.<sup>84</sup> Both before and after Professor Huss's advancement, some law scholars have included animal law articles in their tenure files. However, to my knowledge, no one else has advanced to tenure with a file consisting exclusively of animal law scholarship. Indeed, I have heard there is still a perception of risk associated with including animal law articles or "too many" animal law articles in a tenure file. There is also risk as to lateral career moves. I know of no academic lateral career move that has occurred on the basis of animal law scholarship. As I discuss later, these career risks result not just from disregard for animal law as a substantive area of law, it also reflects legal academia's preferences as to the type of scholarship it deems acceptable evidence of the achievement and the potential of both the substantive field and the candidate.

Far fewer tenured and tenure-track faculty teach animal law than do adjuncts, a reality shared by most Barker-endowed schools. Adjuncts, of course, differ from tenured/tenure-track faculty in their lesser opportunities to interact with students, engage other professors in discussions about their respective fields of research and teaching, and access resources for the support of scholarship. Many adjuncts may come to campus only once a week for part of the day to meet with students about the class, their papers, or projects they might want to pursue. Adjuncts can find it hard to get to know other faculty, and the inability of full-time professors to learn about their part-time colleagues' substantive law specialties can hamper their understanding and respect for fields of law taught by adjuncts. That all may matter less when adjuncts teach courses simply because a law school does not have full-time faculty available (such as might happen in a securities regulation course) or if the local community provides a wealth of unique and interesting practice specialties (such as motion picture financing). Some legal subjects are so solidly accepted already as legitimate practice and academic subjects that it matters little whether courses on them are taught by well-qualified adjuncts or by well-qualified full-time faculty. However, in an area like animal law, where the basic subject matter is not well-known and easily trivialized, lack of interaction with other faculty about the substantive field can affect the overall support it receives.

To oversimplify: practice fields develop as opportunities for legal work in the area diversify and increase; academic fields develop as scholarship diversifies and grows in directions valued by legal academics. The existence of diverse and interesting legal practice opportunities in a particular area of law is, of course, important to the field's development in legal academia. However, the existence of interesting legal questions alone does not necessarily result

84. This is according to Professor David Favre, an animal law scholar at Michigan State University School of Law, one of the founders of the field and whom Joyce Tischler credits with one of the first animal rights legal articles, see Tischler, *supra* note 59. Email of Rebecca Huss, Mar. 7, 2010 (on file with author).

in recognition of a field by legal academics, who put prime emphasis on the quantity and type of scholarship produced in an area when determining its standing in the academy.

Most adjuncts, justifiably, have schedules that leave little time to undertake much scholarship, especially the theory-driven articles valued now in academia. Scholarship increasingly must reflect broader research design and analysis, such as the incorporation of theoretical perspectives from other disciplines or the use of well-designed empirical research projects, than in the past when well-executed doctrinal analysis was more appreciated for its own sake. Exceptional adjuncts, who make important scholarly contributions, as defined by the legal academy, do exist in animal law, as in other fields of law.<sup>85</sup> However, this is, understandably, not the norm; time constraints are very real for adjuncts, who get paid little by law schools and who must invest their efforts first in work to support themselves and their families.

Even if time were not such a major factor, would it be irresponsible for animal law scholars and practitioners to produce the theory-driven scholarship valued by the academy at the expense of pursuing other more immediate, pragmatic goals? Animals suffer greatly by the millions every minute of every day and by the billions over the course of each year.<sup>86</sup> Would it not be more logical for people who want to end that suffering to focus on scholarship that most directly describes the law's inability to help animals and provides a means of redress in the courts or legislatures? Indeed, Jonathan Lovvorn, who

85. Four examples that immediately come to mind are Paul F. Waldau, President of the Religion and Animals Institute, who has taught at Harvard Law School, Suffolk Law School, and Boston College Law School in addition to producing scholarship that focuses on the intersection of animal law and religion; Steven M. Wise, founder and president of the Center for the Expansion of Fundamental Rights, who has taught at a number of law schools in addition to writing several books and articles on animal rights legal theory and practice; David Wolfson, a partner at Milbank, Tweed, Hadley & McCloy in New York City who teaches at Columbia Law School and has produced a number of articles about the insufficiencies of law to protect factory-farmed animals; and Bruce Wagman, a partner at Schiff Hardin in San Francisco who teaches at UC Hastings College of the Law, UC Berkeley School of Law, and Stanford Law School and who has written a number of articles in addition to animal law casebooks.

86. See, e.g., Lovvorn, *supra* note 8, at 142-43 ("[S]ixty to seventy percent of the six million hogs kept for breeding in the U.S. spend a majority of their lives confined in gestation crates. If you eliminate just this one practice, you are reducing the unimaginable suffering of nearly four million animals, every day, every year. Likewise, eighty-five percent of the one million veal calves raised each year live in crates. Banning such crates would significantly reduce the suffering of another eight hundred fifty thousand animals. Ninety-eight percent of the more than three hundred million hens in the U.S. are confined in battery cages so small the birds cannot even walk or spread their wings—that is 294 million birds, more than one animal for each and every man, woman, and child in America. None of the 8.89 billion chickens killed each year in the U.S. are covered under U.S. Department of Agriculture's interpretation of the Humane Methods of Slaughter Act (HMSA), which means they can be cut, shackled, and hoisted without first being rendered insensitive to pain. If you change this, you provide meaningful relief for more animals than the total number of people on the planet.").

heads the litigation department at the Humane Society of the United States, argues that theoretical scholarship along the lines of changing the legal status of animals as property actually *harms* animals.

[W]e must prove...that things can change for animals through peaceful and lawful means. How do we accomplish this?

We can make a good start by jettisoning our own revolutionary rhetoric—such as granting animals “personhood” or otherwise eliminating the property status of animals. It is an intellectual indulgence and a vice for animal lawyers to concern themselves with the advancement of such impractical theories while billions of animals languish in unimaginable suffering that we have the power to change. Moreover, these revolutionary legal theories sound disturbingly similar to, and provide academic fuel for, the rhetoric of some direct action proponents—i.e., that animals can never receive protection without radically revising the U.S. legal system.<sup>87</sup>

For anyone who is at all open to the available information on how animals are treated, there is obvious truth in the statement that animals suffer by the billions in stomach-turning, nightmare-inducing ways. There also is obvious and immediate utility in examining and writing about how existing laws entrench the entitlement of humans to cause such tremendous suffering. Even so, a variety of scholarly approaches must exist (and be financially supported) if animal law is to achieve the acceptance it needs in legal academic circles for animal law programs to flourish.

When practitioner-teachers decry the production of theory-driven scholarship while arguing that there must be more “foot soldiers” on the front lines of animal law practice, they may not be adequately appreciating the relationship between the willingness of law school administrations to offer courses in animal law and the existence of theory-driven scholarship. Setting aside the very real argument that theory-driven scholarship can help to shape effective and efficient avenues for change, if tenure-track faculty interested in animal law fail to produce scholarship that satisfies legal academic standards, the subject will remain largely on the fringes of legal academia. More law school administrations will be more willing to consider adding animal law to the curriculum, and more tenure-track faculty will be willing to invest in scholarship on animal law if there is less risk to their tenure file for having made that investment. That is one reason the Barker gifts are so invaluable. Barker did not dictate the specific type of animal rights law teaching and scholarship his gifts could support. In fact, he donated to schools he considered to be leaders in legal academia, hoping that other law schools might follow paths

87. *Id.* at 139; see also Jeff Welty, Foreword: Animal Law: Thinking About the Future, 70 (1) L. & Contem. Probs. 1 (2007) (stating Lovvorn’s criticism of abstract, theoretical scholarship and assuming arguendo that it is correct). But see Gary L. Francione, Rain Without Thunder, *supra* note 6 (presenting theoretical and pragmatic arguments for eliminating the property status of animals, arguing that animal welfarist approaches hinder the pursuit of meaningful change for animals by instilling consumer complacency, and presenting an incremental approach to freeing animals from the status of property).

they blazed. The recipients of the Barker gifts, logically, will use some of the endowment income to support scholarship with a variety of approaches, including ways that encourage more tenure-track faculty to take interest in the field.

Even granting the limitations outlined above that have become evident with time, delving deeper into the history, timing and context frames the Barker gifts, as successes already. Consider Barker's expectations for his gifts, when they were given, and the circumstances that surrounded their receipt. Barker has identified three related objectives for his donations: to mandate the existence of animal rights law classes, thereby making those classes predictably available to law students; to educate students in animal rights law classes and to see them go on to become judges or legislators better able to understand the value and need for more animal protections by enactment of new laws and enforcement of existing laws; and to increase the probability that animal rights law classes would be offered at law schools nationwide. He endowed leading law schools, bolstering the efforts of those interested in establishing animal rights law classes at other law schools. Deans at recipient law schools received sufficient latitude and the gifts were generous enough to inspire confidence that it would be possible to fund an array of interesting teaching and research opportunities for faculty and students interested in animal law. Although Barker's gifts might well positively influence the field as a whole, Barker himself had fewer, fairly specific goals in mind when he made his donations to law school administrators with significant discretion in tapping the endowment funds, provided they supported animal rights law.

With their modest expectations, generous sums and ample administrative discretion, why might the \$1 million Barker gifts not be welcome? When Barker approached leading law schools with his proposed gifts, animal law was developing as a practice field and course offerings in it were beginning to increase. Nevertheless, the field was not firmly established in legal academia, with most courses taught by adjuncts. The gifts would create something that did not exist: a mandate to offer an animal rights law course in perpetuity. In a way, the gifts could be seen as almost too generous for the time. How could a school spend all of the interest income from such a large gift when the field was still so young? Moreover, the gifts would require that the course and other programs be offered from a particular perspective: improving the status and treatment of animals. Offering an animal *rights* law course, let alone developing an animal rights law *program*, could be considered controversial in an academic environment; accepting a gift from Barker, himself a somewhat controversial figure, might only raise more issues. All these factors might well have resulted in reluctance among some law school deans and university administrators to accept a Barker gift.

For law schools, mandating the continued existence of particular courses can be problematic because of concerns about staffing and enrollments. Few law schools had made long-term investments in the field by allocating some portion of a tenured faculty member's teaching load to animal law courses.



Moreover, no law school had made commitments to animal law courses that would last in perpetuity. Even at schools where tenured faculty were teaching the subject, no mandate existed to continue offering animal law courses if those faculty members changed the focus of their research and teaching, retired, or moved.

At the time of the Barker gifts, most animal law courses were offered on a year-by-year basis, depending on student demand and availability of adjuncts. If student interest was strong and the course could be offered easily, it was; if student interest dimmed or it became difficult to find a teacher, the course would not be offered that year. Barker gifts restrained that valued curricular flexibility by requiring that an animal rights law course be offered at least once every other year and that an animal rights law conference or similar event be offered when the course was not.

Similarly, law schools might encounter complications from the requirement that courses, events, and other activities funded with income from the Barker gifts be presented from a particular perspective, that of increasing animal protection. Not only might such a requirement be perceived as limiting the options for staffing courses and designing opportunities for students, it might be viewed as an infringement on teachers' and students' academic freedom. In a thoughtful 2009 essay, Derek Bok, the former president of Harvard University, discusses ethical problems associated with improperly restricted gifts, controversial donors, and gifts with ulterior purposes.<sup>88</sup> As to whether a gift is improperly restricted, Bok refers to Justice Frankfurter's "four essential freedoms of the university"—"to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study."<sup>89</sup> As Bok points out, these freedoms are easier to state succinctly than to apply to particular gift situations. To some law school deans and university administrators, Barker's requirement of an animal *rights* class might undercut the academic freedom of the institution or professor—their responsibility, some might say—to teach a course without privileging a particular perspective. An animal law course cannot be funded with Barker endowment interest income if it fails to identify the problematic ways animals are treated in our society and does not present students with the opportunity to discuss legal avenues for improving the conditions and status of animals.

What counters the concern about privileging a point of view by requiring that an animal law class be taught from the perspective of animal rights? One is the fact that the idea of animal rights is inherently very broad because of

88. Derek C. Bok, *Reflections on the Ethical Problems of Accepting Gifts: An Open Letter to the Harvard Community*, originally published in the *Harv. U. Gazette Supplement*, May 1979, at 237; recently republished at 182 PLI/NY 429 as an attachment to Carolyn C. Clark, *Looking the Gift Horse in the Mouth: Donor Restrictions on Charitable Giving*, 182 PLI/NY 377, 429, 433–34 (Feb. 4, 2009), available at [http://web2.westlaw.com/find/default.wl?ifm=NotSet&rp=%2ffind%2fdefault.wl&sv=Split&rs=WLW10.06&cite=182+PLI%2fNY+429&fn=\\_top&mt=208&vr=2.0](http://web2.westlaw.com/find/default.wl?ifm=NotSet&rp=%2ffind%2fdefault.wl&sv=Split&rs=WLW10.06&cite=182+PLI%2fNY+429&fn=_top&mt=208&vr=2.0).

89. *Id.* at 433–434.

conceptual room that results from difficulty in defining what rights are and difficulty in applying different concepts of rights to animals. Accordingly, the concept of animal rights includes many perspectives—not just one point of view—about how to ease or eliminate the horrible conditions under which billions of animals live and die in the United States every year.<sup>90</sup> Some of those methods comport with a mainstream belief that there is a moral obligation to treat animals kindly but do not challenge the status quo because they anticipate continued exploitation, albeit in more compassionate fashion. Others are more radical in the extent of legal and societal change they require.

Thus, offering a class from the perspective of improving animals' lot in society is comparable in many philosophical respects to providing courses on other social justice movements in which there are differing perspectives on how to pursue legal reform, such as feminist jurisprudence, civil rights, and children's rights. Finally, as many would acknowledge, all classes are taught from particular points of view, whether they are transparent or not. An animal rights law class can serve as counter-balance to courses lacking in the breadth of perspective to include an animal-protective point of view. Wildlife or environmental law, for example, can be taught exclusively from a natural resources point of view that excludes consideration of animals' interests. Property courses need not include examination of the property status of animals from the standpoint of animals' interests even if judicial opinions that concern animals, such as *Pierson v. Post*,<sup>91</sup> are discussed. The high cost paid by animals for data that is not particularly useful<sup>92</sup> may not be mentioned at all in evidence courses that cover the admissibility of scientific data derived from animal-based toxicity testing. In other words, animal law courses can provide conceptual balance that may be missing in other courses. The underlying determinative factor is whether such balance is perceived as necessary or valued enough to offer an animal law course.

In his article about accepting problematic gifts, Bok raises the problem of accepting gifts from controversial donors. He describes such donors as those "who are said to have earned their money by immoral means or to have

90. It is estimated that between 9 billion and 10 billion animals are killed in the United States each year for food alone and that fewer than 5 percent are covered by any law or regulation that requires humane transport or slaughter. The estimates for the percentage of animals protected while being raised for food is even lower. For information on the number of animals killed and the lack of legal means of protecting them. See Jeff Welty, *Humane Slaughter Laws*, 70 L. & Contem. Probs. 175–206 (2007). See also Wolfson & Sullivan, *supra* note 27.

91. *Pierson v. Post*, 3 Cai. R. 175 (N.Y. Sup. Ct. 1805).

92. The National Research Council of the National Academy of Sciences, *Toxicity Testing in the 21st Century: A Vision and a Strategy* (The National Academies Press 2007) (reporting on problems associated with toxicity testing on animals, including low reliability and utility of the data as well as significant harm to animals, and predicting significant reductions in animal-based testing with more reliable and useful data as alternative methods are developed).

acted in ways that conflict with strongly held values in the community.”<sup>93</sup> Bok notes that there are problems with accepting some such gifts but that universities often accept them even when controversy is associated with the donor. Institutions contend that mere acceptance of a gift does not imply that a donor’s character, behavior, or ideas are good.<sup>94</sup> He also says it would be difficult to draw meaningful lines.

Should the university accept tuition from an unsavory parent or should it treat the student as if he or she had no means of support and thus qualified for full financial aid? Should civil rights organizations, community action agencies, and other social welfare groups have the same obligation to reject gifts from controversial sources? If not, what principles justify the use of different standards for different organizations?<sup>95</sup>

Barker does not create controversy in the ways that Bok’s examples do; Barker earned his money through legitimate means, and he acts in accordance with the principle of kindness to animals, a value that receives, at least, lip service in our society. Nevertheless, Barker’s gifts could prompt controversy that might make acceptance of his gifts even less likely than donations from those who have earned their money by illegal means or through conduct that offends public values. Law school and university administrators may not question the assumption that they or others hold that an “animal rights” perspective includes affirmation of violent animal activist tactics. Accepting a Barker gift also can be seen as an affront to members of the university who engage in animal research and as calling into question standard, accepted practices founded on the exploitation of animals. Barker long has been an outspoken critic of such research.<sup>96</sup>

Indeed, Barker has been forthright about his views on a variety of animal issues. Although he had not been associated with people or organizations in the animal rights movement that engage in direct action, Barker could have been considered controversial by law school administrators considering his proposed gifts and their terms. And, as a living donor, there would be more time and opportunity for him to become even more controversial. In fact, since his retirement, Barker *has* engaged in even more advocacy and activism for animals. He characterizes his plans as follows:

[M]y involvement with animal rights has become a more important part of my life with each passing day. As proud as I may be of my nineteen Emmys and my fifty years on television, I really feel that some of the most valuable things I may do in life may be things I have yet to do. And I suspect it will be in the area of animal rights.<sup>97</sup>

93. Bok, *supra* note 88, at 435.

94. *Id.*

95. *Id.*

96. Barker, *supra* note 2, at 225-226.

97. *Id.* at 236.

He has gotten personally involved in his retirement with several animal rights causes. During the first three months of 2010 alone he gave \$5 million to Sea Shepherd, which directly interferes with whaling vessels in open seas,<sup>98</sup> \$1 million to SHARK (Showing Animals Respect and Kindness) for work on legislative bans of live pigeon shoots in Pennsylvania,<sup>99</sup> and \$2.5 million to help PETA establish a Los Angeles office.<sup>100</sup>

Barker stands to become even more controversial as his activism and support of animal rights causes grows, and as, in the public's mind, the animal rights movement is overly associated with violence, due to illegal conduct by some of its proponents.<sup>101</sup> The public already has expressed ambivalence about increased protection of animals, particularly if it undercuts humans' interests in using animals for their purposes.<sup>102</sup> While there appears to be increasing support for treating animals better, it is not clear that there is increasing support for freeing animals from human exploitation altogether.<sup>103</sup> Barker is a "strict vegetarian"<sup>104</sup> and an outspoken critic of most human uses of animals for entertainment (including hunting), research, clothing (including leather), and food.<sup>105</sup> His values and lifestyle conflict with popular attitudes and uses of animals. This could make him seem controversial, even without using illegal or violent methods to advocate for animals.

98. Madigan, *supra* note 1, at B13.

99. Pacelle, *supra* note 35.

100. Associated Press, Bob Barker donates \$2.5 million to PETA: Money from 'Price Is Right' host to help organization open new L.A. location, <http://www.msnbc.msn.com/id/35788458/ns/entertainment-celebrities/> (last visited Jun. 21, 2010).

101. Lovvorn, *supra* note 8, at 138 ("[F]ear of animal rights—and of animal rights activists—is undoubtedly fueled, at least in part, by the violent extremists of the movement and the specter of direct action, which is also sometimes called animal 'terrorism'").

102. Professor Gary L. Francione calls this "moral schizophrenia." Gary L. Francione, Introduction to Animal Rights: Your Child or the Dog?, *supra* note 6, at 1-30.

103. See, e.g., American Veterinary Medical Association, Poll Finds Americans Cool Toward Animal Rights, JAVMA NEWS, July 15, 2003, <http://www.avma.org/onlnews/javma/jul03/030715f.asp> (last visited Jun. 21, 2010) ("A Gallup poll testing public reaction to several animal rights goals found that most Americans aren't willing to fundamentally change their views about animals." The poll responses indicated that 71 percent of respondents believed that "animals are entitled to some protections from harm and exploitation, [but only] 25 percent think that animals deserve the same rights as people.") See also Jonathan Lovvorn, *supra* note 8, at 137-138 (describing various polls that indicate support for increasing protection for some kinds of animals but little support for fundamentally altering the status of animals).

104. Madigan, *supra* note 1, at B13.

105. Barker, *supra* note 2.

Given all the factors surrounding Barker himself and his gifts, it is, perhaps, surprising that so many law school deans accepted his endowments. As Bruce Wagman points out, there have been rumored rejections of his gift offers,<sup>106</sup> although Barker himself discusses only the positive experiences he has had with recipient law schools.

Perhaps not all deans who accepted Barker gifts valued animal rights law or, like then-Dean Robert Clark at Harvard Law School, recognized that animal law intersects with many areas of law and presents valuable opportunities for students to think about law from new perspectives.<sup>107</sup> However, to accept a \$1 million gift that requires all endowment income be used for animal rights law teaching and research, a dean had to at least accept that animal law is a legitimate field of study and practice. That Barker's gifts were large enough to fund many different animal rights law activities in the future, if not immediately, may have been important to some law school deans. There would be sufficient income from his donations to support clinical courses or an array of scholarly opportunities, depending on changing interests of faculty and students. And, if deans were at all interested in investing in the field of animal rights law, surely accepting the Barker gifts would pose far fewer difficulties at the time he offered them to law schools than, say, would have been associated with an offer to establish an endowed chair. A law school might offer an animal law class because there were enough animal law practitioners in the area or sufficient interest among tenured faculty members to ensure that the course could be taught regularly enough to meet the gift terms. By comparison, accepting a gift to endow a chair in animal rights law would mean identifying a particular professor who meets the academic qualifications, including having the scholarly credentials as defined in legal academic circles, to occupy the post. If a qualified candidate were not on the faculty already, a search would be required, with no guarantee the post could be filled and occupied on an on-going basis.

Taking into account all of these considerations, Barker's gifts can be appreciated as exceptionally generous and as appropriately structured to obtain objectives necessarily limited by the circumstances of animal law as an academic field and of law school administrators' most likely concerns and perspectives at the time the gifts were offered. Barker appears to have pegged the price just right, establishing an important milestone in the development of opportunities for students to study animal rights law.

It is important to appreciate Barker's gifts as the first of their kind and to acknowledge that the very existence of his endowments can serve as an incentive to potential donors to contribute even more towards this effort. At a time in history when billions of animals suffer so profoundly and there is such great need for money with which to help them, Barker's law school donations validate giving for the purpose of legally changing the rules that facilitate that

106. Wagman, *supra* note 62.

107. Harvard Law School, HLS Receives Gift To Study Animal Rights Law, June 13, 2001, [http://www.law.harvard.edu/news/2001/06/13\\_animals.php](http://www.law.harvard.edu/news/2001/06/13_animals.php) (last visited June 21, 2010).

suffering. They also validate the giving of gifts whose benefits are relatively more speculative than many other types of aid that could be offered to animal advocacy organizations and which can occur only in the future (that is, long after law students have taken animal law classes, become lawyers, and use their training to help animals).

Potential donors who share Barker's values should be encouraged that so many law schools have committed, in perpetuity, to offering a course and other opportunities in animal rights law. The acceptance of these gifts is cause for optimism about the future of the law's role in improving animals' status. His endowments are large enough that potential donors have good reason to believe that their added sums will, in combination with the Barker gifts, make a substantial impact. Those effects of his bounty—a validation of gifts for purposes of future legal change and optimism about the future of animal law as a source of help for animals—extend well beyond the walls of the specific law schools that have benefited already from his generosity.